IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 66 of 2001

in

SPECIAL CIVIL APPLICATIONNo 2946 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

To all Labour Courts and
Industrial Tribunals of
the State.

ASMANMIYA C MALEK

Versus

G S R T C

Appearance:

1. LETTERS PATENT APPEAL No. 66 of 2001
MR MUKESH H RATHOD for Appellant No.
MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

The appellant - Asmanmiya Chhadumiya Malek has filed this Letters Patent Appeal against the judgement and order dated 31.7.2000 passed by the Learned Single Judge of this Court (Coram: S.K.Keshote, J) in Special Civil Application No. 2946 of 1989 whereby, the Learned Single Judge allowed the writ petition and quashed and set aside the judgement and award passed by the Labour Court reinstating the workman in service without backwages.

2. The appellant - workman was working as Conductor with the respondent Corporation. He was dismissed from service on the ground of misappropriation. Misappropriation was proved, in as much as, the appellant - workman himself deposited the amount of Rs.421/- which was misappropriated by him. Thus, it was a case of temporary misappropriation. This order of termination of service was challenged by the workman before the Labour Court by way of Reference before the Learned Court. He admitted the legality of the departmental inquiry conducted by the Corporation and also the findings arrived at by the Inquiry Officer which was based on the evidence produced before him. Past record of the appellant-workman was not good. Inspite of all this, the Labour Court came to the conclusion that the order of dismissal was not warranted. Therefore, in exercise of its powers under Section 11-A of the Industrial Disputes Act, 1947, the Labour Court interfered with the order of punishment and passed an order of reinstatement in service without backwages by observing that one more chance was required to be given to the workman to improve because dismissal from service would result in taking away bread and butter from him permanently and because of that, not only he but his entire family would starve. In our considered opinion, it is nothing but a misplacing sympathy shown to a wrong and dishonest person. Thus, the Labour Court held that the punishment awarded by the Authority was highly disproportionate and not commensurate to the misconduct committed by the workman and accordingly, passed the order of reinstatement but without backwages. The impugned judgement and award passed by the Labour Court was challenged by the respondent - Gujarat State Road Transport Corporation (for short the "Corporation") before this Court by way of

Special Civil Application No. 2986 of 1989. The Learned Single Judge allowed the writ petition by judgement and order dated 31.7.2000 and quashed and set aside the impugned judgement and award passed by the Labour Court reinstating the workman in service without backwages and restored the order of dismissal passed by the Corporation against the workman.

3. The Learned Single Judge was of the opinion that the Labour Court failed to assign any cogent reasons for interfering with the order of penalty. According to the Learned Single Judge, to give one more opportunity to improve cannot be said to be a ground for interfering with the order of punishment and the approach of the Labour Court to reinstate the workman in service on the ground that if the order of dismissal is sustained, then it would be a question of bread and butter of the workman and his family was wholly wrong. The Learned Judge was of the opinion that in the matter of penalty sole domain is of Disciplinary Authority to decide what punishment should be imposed and if in a given case, the workman is dismissed from service on the charge of misappropriation then such an order of punishment cannot be interfered by the Labour Court in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act. Learned Counsel Shri Prabhakar Upadhyay for the appellant workman vehemently submitted that the Labour Court had jurisdiction under Section 11-A of the Industrial Disputes Act and when the Labour Court considering the peculiar facts and circumstances of the case thought it fit to interfere with the order of punishment then it was not open to the Learned Single Judge of this Court to exercise his jurisdiction under Article 227 of the Constitution. He submitted that the penalty of dismissal from service was grossly disproportionate to the misconduct committed by the appellant-workman. He submitted that it was a case of temporary misappropriation and the appellant-workman had already deposited Rs.421/- which was misappropriated by him.

4. From the judgement of the Labour Court, it appears that the Labour Court was fully conscious of the fact that the appellant - workman committed serious misconduct of misappropriating public funds. The Labour Court was also conscious about the poor past record of the appellant - workman. Inspite of it, it had interfered with the order of punishment only on the ground that one more chance is required to be given to the workman to improve because if he is not reinstated in service then not only he but his entire family would suffer.

5. Law on this point is very well settled by catena of decisions of the Honourable Supreme Court and this Court. In the matter of punishment, sole discretion is of the Disciplinary Authority. In serious cases like misappropriation etc., if the Authority inflicts punishment of dismissal from service then in our considered opinion, such punishment cannot be said to be grossly disproportionate. Therefore, it was not open to the Labour Court to exercise its jurisdiction under Section 11-A of the Act. It is true that with the passing of order of dismissal from service, one may lose his job, which may result in to an economic death not only to him but also to his family, but such dishonest or corrupt person cannot be retained in public service, who misappropriate public money. There are thousands of unemployed people who are waiting for employment. It is unfortunate that the Labour Court gave one more chance to the workman to improve though his past record was absolutely bad. These are no grounds for the Labour Court to interfere with the order of punishment passed by the Disciplinary Authority. The appellant-workman should have thanked the Corporation in not prosecuting him for the offence of temporary misappropriation under Indian Penal Code. Corporation rested itself with dismissing him from service. If he was prosecuted for that offence then on his own admission in the inquiry and the fact of depositing Rs.421/-, misappropriated by him, he would have been convicted and sentenced by the Criminal Court. Therefore, there is no question of retaining such person in public service.

6. In view of the above discussion, we are of the considered opinion that the Labour Court was not right in passing an order of reinstatement and such an order was rightly interfered by the Learned Single Judge in his writ jurisdiction under Article 227 of the Constitution.

7. The petition was filed by the Corporation before this Court under Article 227 of the Constitution and the Learned Single Judge has also exercised his jurisdiction under Article 227 of the Constitution only. Therefore, this Letters Patent Appeal would not be maintainable.

8. Thus, on all counts, this appeal is required to be dismissed and accordingly, it is dismissed.

(B.J.Shethna, J)

(Akshay H Mehta, J)
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